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Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States

RICCARDO GREEN,

Petitioner,

v.

NORTH SEATTLE COMMUNITY COLLEGE,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

RICCARDO GREEN
(Pro Se Counsel of Record)
Po Box 45181
Seattle, WA. 98145

Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Whether respondent, North Seattle Community College violated petitioner's civil constitutional rights of the Fifth Amendment to US Constitution Equal Due Process of Law and Fourteenth Amendment to US Constitution Equal Protection, which are upheld constantly by Congress and US Supreme Court?

2. Whether US Federal District Court abused discretion indicating petitioner is an independent contractor non employee versus employee by respondent, North Seattle CC?

3. Whether petitioner was hired by respondent as an independent contractor or employee?

4. Whether respondent, North Seattle Community College violated petitioner's civil rights of wrongful termination, U.S.C 1981claim, retaliation, racial and national origin discrimination.

PARTIES TO THE PROCEEDING

Petitioner is Riccardo Green, who was plaintiff, pro se litigant attorney in the US Federal District Court Western District of Washington and appellant in the US Court of Appeals Ninth Circuit. Respondent is North Seattle Community College, defendant in the US Federal District Court Western District of Washington, and appellee in the US Court of Appeals Ninth Circuit.

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Title I, Civil Rights Act of 1991, as amended section 1, prohibition against all racial discrimination in the

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, pro se litigant attorney, Riccardo Green prays respectfully that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

Opinions and orders of the federal district court and appellate court are attached as appendix A to C.

JURISDICTION

Jurisdiction is proper in this Court. The judgment sought to be reviewed was entered by the U.S. District Court for the Western District of Washington on May 03, 2006. Petitioner filed brief in opposition to motion for summary judgment on March 16, 2006. Respondent filed first

lawsuit employment discrimination case against respondent, which was dismissed from federal district court on May 03, 2006 by Judge Thomas Zilly. Petitioner filed notice of appeal on May 05, 2006. Petitioner filed 14 day oral extension by phone of time to file Appellant's reply brief on August 09, 2006. August 21, 2006 petitioner filed original and seven copies informal reply brief and supplemental excerpts of record. June 11, 2007 US Appeal Courts filed memorandum disposition case affirmed in part, vacated and remanded in part, without oral hearing and unpublished, unsigned by three judges Edward Leavy, Pamela A. Rymer, and Thomas G. Nelson. June 21, 2007 petitioner filed panel rehearing. July 31, 2007 filed order petition for panel rehearing is denied and no further filing will be accepted in this closed case. August 10, 2007 US Court of Appeals Ninth circuit filed mandate case affirmed in part, vacated and remanded in part. August 15, 207 Judge Zilly ordered petitioner' claims be dismissed.

The present Petition for Writ of Certiorari is filed within 90 days of the denial of Petition for Panel Rehearing by the Ninth Circuit and is timely pursuant to 28 U.S.C. section1257 and 2101(c) and Rule 10(1) (c) of the Rules for the U.S. Supreme Court. The district court obtained jurisdiction pursuant to 28 U.S.C. section 1331 and 1343(a) (1)-(4); and this Court has jurisdiction pursuant to 28 U.S.C. section 1254(1).

CONSTITUTIONAL PROVISIONS

Article 5 (Fifth Amendment) United States Constitution in pertinent part provides:

"No persons shall be deprived of life, liberty, or property, without due process of law."

Article 14, section 1, (Fourteenth Amendment) United States Constitution in pertinent part provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUES INVOLVED

Title 42 U.S.C 2000 et. sequence, 2000e-2, section 703 and 2000e-3 section 704.

Title I Civil Rights Act of 1991, section 1U.S.C. 1981(a) and 1981(b).

Title VII Civil Rights Act of 1964, as amended 2000 et. sequence.

STATEMENT OF THE CASE

Procedural history

Petitioner, pro se litigant Riccardo Green employed by defendant for over three years since June or July 2001 as tai chi and self defense instructor. Petitioner was in good standing before the employment termination in 2004. Petitioner was replaced by a male Caucasian instructor in or about April 2004. Petitioner indicated to respondent in deposition testimony, "plaintiff's brief in opposition to defendant's motion for summary judgment" and in "appellant's informal briefs" to appellate courts that respondent North Seattle CC failed to produce any written documentations that petitioner was given any class notification and/or roster for the same quarter petitioner was replaced in 2004, which petitioner has received for every class in the past three years. Respondent failed to provide any payment compensation policies signed and agreed to by petitioner, and respondent fails to prove that petitioner signed and agreed to any employment policies that enforce title VII. Petitioner filed first complaint with EEOC in or about August 2004 regarding respondent's employment discrimination. Respondent notifies petitioner via electronic mail that self defense classes are cancelled and employment position as tai chi instructor is no longer available.

Respondent willfully misrepresented to all courts that petitioner is independent contractor, when in fact petitioner is employed by respondent, and respondent failed to prove independent contractor relationship exists, thus respondent continues to violate United States Federal IRS tax laws, civil and constitutional laws

of the fifth and fourteenth amendments of the US Constitution, and labor union laws. Petitioner files this petition for writ of certiorari in "good faith". Petitioner filed Judicial Notice of Documents in appellate court, which were not filed in US district court regarding this case.

Petitioner's race and national origin is quarter Filipino, Jamaican, Mongolian, and Native American. Petitioner was hired in or about June 2001 by respondent, North Seattle CC as tai chi and self defense instructor part time faculty member for the continuing education department. Petitioner was terminated from employment in or about July 2004 as tai chi instructor and replaced by another tai chi instructor who is a male Caucasian named Dennis Sharp without cause in July 2004, Summer quarter 2004, and terminated as self defense instructor in Fall quarter 2004. Petitioner does not establish any independent contractor and/or arbitration agreement forms, which determines petitioner is independent contractor and respondent fails to provide any admissible evidence. Petitioner was denied fringe benefits, and percentage pay compensation compared to other similarly situated continuing education instructors who are mostly of Caucasian race.

Petitioner filed first lawsuit action of employment discrimination on March 08, 2005.

Respondent filed motion for summary judgment on March 07, 2006.

Petitioner filed brief in opposition to motion for summary judgment on March 16, 2006.

Respondent first lawsuit employment discrimination case dismissed from federal district court on May 03, 2006 by Judge Thomas Zilly.

Petitioner filed notice of appeal on May 05, 2006.

Petitioner filed 14 day oral extension by phone of time to file Appellant's reply brief on August 09, 2006.

August 21, 2006 petitioner filed original and seven copies informal reply brief and supplemental excerpts of record.

August 29, 2006 US Court of Appeals Ninth Circuit received "Supplemental Records on Appeal" submitted by petitioner to district court.

September 11, 2006 US Court of Appeals Ninth Circuit received notice of change of address from Aaron Vincent Rocke.

September 22, 2006 noticed filed by Catherine Hendricks for respondent North Seattle Community College.

December 29, 2006 counsel for respondent filed notice of withdrawal for North Seattle CC.

June 05, 2007 case submitted to screening panel 454.

June 11, 2007 US Court of Appeals filed memorandum disposition case affirmed in part, vacated and remanded in part, without oral hearing and unpublished and unsigned by three judges Edward Leavy, Pamela A. Rymer, and Thomas G. Nelson.

June 21, 2007 petitioner filed panel rehearing.

July 31, 2007 filed order petition for panel rehearing is denied and no further filing will be accepted in this closed case.

August 10, 2007 US Court of Appeals Ninth Circuit filed mandate case affirmed in part, vacated and remanded in part.

August 15, 207 Judge Zilly ordered all petitioners' claims be dismissed without prejudice.

Material Undisputed Facts

Introduction:

Petitioner is born in the United States. Petitioner's civil rights, human rights, constitutional rights, fair employment rights, equal due process and equal protection rights have been violated by appellees.

Petitioner hired in or about June 07, 2001 sees p. 01 as part time faculty member as tai chi and self defense instructor for the respondent's continuing education department see E.R. at 01, 690, 691, 706, 717, 833, 980-985. Respondent were aware of the race and gender of appellant see E.R. 01, 637, 638. Petitioner was not provided with student enrollment roster for Spring 2004 as in other previous quarters for past three to four years by respondent, Marva Scholesslor. Petitioner has no history of canceling class at the "last moment" while employed by North Seattle CC. Petitioner instructed each and every class in tai chi and self defense at North Seattle CC since approximately 2001. Petitioner reasserts all facts stated in opening informal brief. Petitioner hired as part time faculty member employee not independent contractor see E.R. at 03 dated June 12, 2001 and signed by Kendall Harris. Petitioner issued w4 form see E.R. at 08 and W2. Petitioner never issued by appellees prior to Winter quarter 2004 class course description forms to instruct tai chi for Spring quarter 2004 see E.R. at 21 and 25. Petitioner is terminated in or about Summer 2004 see E.R. at 36, 50 states "Riccardo, we already have plenty of Tai-Chi classes scheduled for fall. We are not willing to ad any more section, it would only divide the enrollment", 51, 61, 62, 68, 69. Appellant filed EEOC complaint on August 10, 2004 regarding employment discrimination see E.R. at 105, 98, 99, 100, 101, 102, 103. After filing employment discrimination complaint with EEOC in August 10, 2004 and received by appellees on August 16, 2004 see E.R. at 119-122, appellant is terminated as self defense instructor see E.R. at 109. E.R. 119 states "I am writing on behalf of North Seattle Community College in response to EEOC Charge Number 380-2004-02769, dated August 10, 2004, received on August 16, 2004, filed by Mr.

Riccardo Green." "The Continuing Education instructors are not members of our faculty union (Seattle Community College Federation of Teachers-SCCFT) and not covered under most state higher education or SCCD policies." Appellant issued W2 employment forms see E.R. 1021 "W2 Wage and Tax Statement 2002" with inappropriate federal IRS tax deductions not 1099 tax forms see E.R. at 1802-1816 with inappropriate federal IRS tax deductions, 1942, 1885. Petitioner reasserts all facts in appellant's opening informal brief dated June 16, 2006. Petitioner never received any performance reviews and/or written warnings that appellant was not performing according to appellees expectations, and appellees fail for provide evidence. Petitioner reasserts individual appellees have not provided any independent contractor agreements. Petitioner filed written complaints with Public Employment Relations Commission and Federal IRS against North Seattle CC, Seattle Community College District, and Seattle Community College Federation of Teachers Union Local 1789 in or about January 2007 due to including but not limited to failure of labor union and employer violations in labor union representation, failure to file grievances, and failure to allow labor union membership.

Petitioner files lawsuit for jury demand and money damages against individual employees named Kendall Harris, Hendrika Benjamin, David Bittenbender, and Marva Scholesslor for money damages and liability in his and her fullest individual capacity and <u>not</u> the state North Seattle CC. Petitioner reasserts appellees Kendal Harris supervisor of continuing education department retaliates by terminating petitioner's employment as self defense instructor after petitioner file complaint

with EEOC regarding illegal conduct by respondent see E.R. at 111 dated August 17, 2004 at 4:18pm "David, from January-December 2004 we will offer 1370 individual classes. We have over 350 instructors we will use for 2004,"and appellees Hendrika Benjamin and Kendal Harris terminated appellant's employment as tai chi instructor. Petitioner was scheduled to instruct tai chi and self defense in Summer quarter 2004, see E.R. at. 115 dated August 18, 2004 at 8:49am "David, yes, that was Green and No his class was cancelled due to low enrollment", 618. Petitioner did not sign to, agree to, and/or receive any instructor cancellation policies, student complaints to defend or dispute against, instructor payment policies, EEOC policies, affirmative actions policies, performance reviews, collective bargaining agreements, community service contracts or classes see E.R. at 118. Petitioner received no fringe benefits see E.R. at 233. Respondent received no written class cancellations for Summer quarter 2004 or Fall 2004 from appellant. Petitioner was replaced by male Caucasian instructor non protected class member compared to appellant for Summer 2004 and Fall 2004 see E.R. at 628, 629, 633, 635, 645. Petitioner is provided with student enrollment roster prior to class in previous quarters, Petitioner was not provided class roster prior to abrupt cancellation in Spring 2004.

Petitioner obtains over fifteen years of tai chi and self defense instruction, qualified for position, and has taught tai chi and self defense for continuing education departments at other community colleges in Washington State such as Edmonds CC, Bellevue CC, Shoreline CC, and Seattle Central CC. Petitioner reasserts Dennis Sharp is still employed as tai chi instructor into year 2007. Petitioner obtains history of emotional and serious health conditions see E.R. at

1044-1047. Petitioner reasserts that appellees obtain pre text to employment discrimination and termination see E.R. at 1070 dated June 06, 2004 at 1:48pm states "I hear you are not teaching that class any longer?", "No they just told me you weren't teaching that class", 1072, 1073, 1074 dated July 01, 2004 states "Riccardo, this class is being taught by another instructor", 1075-1080, and 1084 states about racial discrimination, "Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, or human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." Petitioner reasserts that Petitioner was paid only hourly and not by percentage, and that appellant taught multiple times per week per quarter see E.R. at 1075 states "We do no have any scheduled classes for you in the Fall 2004 quarter", 1076, 1077, 1080 states "We will not be offering Self Defense in the Fall of 2004", "The rate of pay (whether an hourly rate or a split of student tuition) is determined at the time the instructor is hired." Petitioner was given only one option of payment, hourly and not percentage. Petitioner denied fringe benefits as employee part time faculty member see E.R. at 1800 states "Full and part time employees may be eligible for union membership." "Full and part time faculty are eligible and are members of unions at each of the community and technical colleges", 1801 states "Instructors that teach credit and/or non credit courses are eligible for union membership.", 1802, 1803, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949. Petitioner admits there is no breach of contract with appellees. Petitioner reasserts that extra work duties requested prior to adverse action and after

opposing requested duties which are not part of the employment description of an employed instructor, it is the security officer's duties to unlock doors for students, and security officer named Tony Harley who is African American male is no longer employed by appellees see E.R. at 1927 states "Because Mr. Harley is no longer an employee of the college, we are unable to obtain his consent to release that information," and 1928 states "Mr. Tony Harley is not employed anymore with SCCD," and exhibit A, and appellant was treated less favorable than other instructors who are members of non protected class and similarly situated instructors employed by North Seattle CC. Petitioner reasserts that all excerpts of record filed with US Court of Appeals Ninth Circuit and exhibits filed in US District Court of Western District of Washington are admissible evidence and self authenticated. Respondent have not presented any evidence to defend against any of these allegations and undisputed evidence presented. Furthermore, Petitioner was terminated as tai chi instructor in 2005 in similar case Green v. Shoreline CC, Et. Al individuals 2-06-CV-0465-MJP, in which Caucasian female tai chi instructor replaced petitioner without cause in or about May 2005. Respondent have ruined Petitioner's career and profession as tai chi and self defense instructor, and appellant's ability to retain continuous employment, causing Petitioner financial and emotional irreparable harm.

Race Discrimination

Petitioner replaced by a non protected member who is male Caucasian named Dennis Sharp in Summer 2004 and Fall 2004 due to appellant's race. Petitioner reasserts all facts stated herein. Petitioner provided

evidence of direct race discrimination. Respondent were aware of petitioner's race, see exhibits filed in federal district court, e.g., Batson, 476 U.S. at 96-98; Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), Runyon v. McCrary, 427 U.S. 160 168 (1976), Rice v. Cayetano, 528 U.S. 495, 514-22 (2000), EEOC v. Commercial Office Products Co., 486 U.S. 107, 110 (1988), Shempert v. Harwich Chemical Corp., 151 F. 3d 793, 796-797 (CA8 1998, Philibin v. General Electric Capital Auto Lease, Inc., 929 F. 2d. 321, 323-324, Sandhu v. Lockheed Missiles and Space Co., 26 Cal. App. 4th 846, 859 (1994), Pasquantino v. United States, 544 U.S. 349, n. 2 (2005), McFarland v. Scott, 512 U. S. 849, 858 (1994), Sullivan v. Everhart, 494 U.S. 83, 92 (1990), McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800-801 (1973). Petitioner never resigned as tai chi instructor, only self defense instructor only after the class was cancelled by respondent for Fall 2004. Title VII states in part regarding race discrimination "prohibits employer actions that discriminate, by motivation or impact, against persons because of race."

Title VII does not contain a definition of race, nor has the Commission adopted one. For the collection of federal data on race and ethnicity, the Office of Management and Budget (OMB) has provided the following five racial categories: *American Indian or Alaska Native*; *Asian*; *Black or African American*; *Native Hawaiian or Other Pacific Islander*; and *White*; and one ethnicity category, *Hispanic or Latino*.[OMB has made clear that these categories are "social-political constructs and should not be interpreted as being genetic, biological, or anthropological in nature."

"Title VII's prohibition of race discrimination generally encompasses:

- **Ancestry:** Employment discrimination because of racial or ethnic ancestry. Discrimination against a person because of his or her ancestry can violate Title VII's prohibition against race discrimination. Note that there can be considerable overlap between "race" and "national origin," but they are not identical. For example, discrimination against a Chinese American might be targeted at her Asian ancestry and not her Chinese national origin. In that case, she would have a claim of discrimination based on race, not national origin.

- **Physical Characteristics:** Employment discrimination based on a person's physical characteristics associated with race, such as a person's color, hair, facial features, height and weight.

- **Race-linked Illness:** Discrimination based on race-linked illnesses. For example, sickle cell anemia is a genetically-transmitted disease that affects primarily persons of African descent. Other diseases, while not linked directly to race or ethnicity, may nevertheless have a disproportionate impact. For example, Native Hawaiians have a disproportionately high incidence of diabetes. If the employer applies facially neutral standards to exclude treatment for conditions or risks that disproportionately affect employees on the basis of race or ethnicity, the employer must show that the standards are based on generally accepted medical criteria.

- **Culture:** Employment discrimination because of cultural characteristics related to race or ethnicity. Title VII prohibits employment discrimination against a person because of cultural characteristics often linked to race or ethnicity, such as a person's name, cultural dress and grooming practices, or accent or manner of

speech. For example, an employment decision based on a person having a so-called "Black accent," or "sounding White," violates Title VII if the accent or manner of speech does not materially interfere with the ability to perform job duties.

- **Perception:** Employment discrimination against an individual based on a belief that the individual is a member of a particular racial group, regardless of how the individual identifies himself. Discrimination against an individual based on a perception of his or her race violates Title VII even if that perception is wrong.

- **Association:** Employment discrimination against an individual because of his/her association with someone of a particular race. For example, it is unlawful to discriminate against a White person because he or she is married to an African American or has a multiracial child, or because he or she maintains friendships or otherwise associates with persons of a certain race."

National Origin Discrimination

Petitioner replaced by non protected member who is male Caucasian named Dennis Sharp due to appellant's national origin and ancestry. Petitioner reasserts all facts stated herein. Respondent were aware of appellant's national origin, ancestry, and featured characteristics, see Espinoza v. Farah Manufacturing Company, 414 U.S. 86 (1973). Title VII of the Civil Rights Act of 1964, states in part "protects workers from employment discrimination based on their race, color, religion, sex, national origin, opposition to practices made unlawful by Title VII, or participation in Title VII proceedings. This Section of the Compliance Manual focuses on the prohibition against national

origin discrimination. In enacting this prohibition, Congress recognized that whether an individual's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, he or she is entitled to the same employment opportunities as anyone else. Likewise, Title VII's protections extend to all workers in the United States, whether born in the United States or abroad and regardless of citizenship status. Title VII articulates the national policy against national origin discrimination in the workplace, while also preserving an employer's freedom of choice to make sound business decisions. "Generally, national origin discrimination means treating someone less favorably because that individual (or his or her ancestors) is from a certain place or belongs to a particular national origin group.(Title VII prohibits employer actions that have the purpose or effect of discriminating against persons because of their national origin. In addition, Title VII prohibits discrimination against a person because he or she is associated with an individual of a particular national origin."

Color Discrimination

Petitioner replaced by non protected member who is Caucasian named Dennis Sharp due to petitioner's darker skin color compared to Mr. Sharp's white skin color, see Walker v. Secretary of Treasury, 742 F. Supp. 670, 506 U.S. 853 (1992).

Wrongful Termination

Petitioner was hired as tai chi and self defense instructor. Appellant reasserts all facts stated herein. Petitioner does not obtain any or is unaware of any

student complaints. Petitioner obtains consistent student enrollment since 2001 date of hire to termination. Petitioner was terminated as tai chi and self defense instructor in 2004, see Conner v. City Forest Acres, 348 S.C. 454, 560 S.E. 2d. 606 (2002), Kiriakides v. United Artists Commun., Inc., 312 S.C. 271, 275, 440 S.E. 2d. (1994), Horton v. Darby Elect. Co., 360 S.C. 58, 66-68, 599 S.E. 2d., 456, 460-61 (2004), Plummer v. Humana of Kansas, Inc., 715 F. Supp. 302, 304 (D. Kan. 1988), Coman v. Thomas Mfg., Co., 325 N.C. 172, 381 S.E. 2d., 445 (1989).

Disparate Treatment

Petitioner was treated less favorable compared to other similar situated instructors who are non protected class members due to requirements of extra duties imposed onto appellant, which are not part of an instructor's duties: 1) to unlock doors, 2) stand by the entrance/exit doors, 3) press button for security officer to let appellant's students and other female Caucasian instructor named Brooke Young's Pilates instructor's students into the building. Petitioner opposed extra duties request by appellees via phone, prior to adverse action of employment termination, see Troupe v. May Department Store, 20 F. 3d. 734, Marshall v. American Hospital Association, 157 F. 3d. 520, Int'l Bhd. Of Teamsters v. US, 431 U.S. 324, 335 n. 15 (1977). Petitioner has proven all three prima facsie elements: membership in a protected class; qualification for the position at issue; and adverse action. Petitioner satisfies all three elements.

Retaliation

Petitioner filed written EEOC complaint opposing employment discrimination due to race on or about August 10, 2004. Respondent David Bittenbender files written response and receipt of EEOC complaint on August 16, 2004, and appellant receives adverse action in terminated as self defense instructor for Fall 2004 and tai chi instructor for Summer and Fall 2004, see Dee v. Colt Construction and Delivery Company, 28 F. 3d. 1446 (7th Cir.) (1994), Morgan v. Nat'l 5424 RR, Passenger Corp., 232 F. 3d 1008, 1017 (9th Cir. 2000), EEOC v. Wal-Mart Stores, Inc., 187 F. 3d 1241, 1246 n. 3 (10th Cir. 1999) (finding liability for punitive damages where the defendant "was aware of the prohibitions against workplace discrimination and had a company wide policies designed to ensure compliance."), Austin v. Shelby County Government, 3 S.W. 3d. 474, 480 (Tenn. App. 1999), Johnson v. Univ. of Cincinnati, 215 F. 3d., 561, 579 (6th Cir. 2000), cert. denied, 531 U.S. 1052 (2000). Prima fascia three elements: engaged in protected activity; suffered adverse employment action; existence of causal link between protected activity and adverse action. Petitioner satisfies all three elements. Title VII states in part "There are three essential elements of a retaliation claim: 1)protected activity --opposition to discrimination or participation in the statutory complaint process 2) adverse action 3) causal connection between the protected activity and the adverse action. Further filing an EEOC complaint is protected activity, states in part "PROTECTED ACTIVITY (1) opposing a practice made unlawful by one of the employment discrimination statutes (the "opposition" clause); or (2) filing a charge, testifying, assisting, or participating in any manner in an investigation,

proceeding, or hearing under the applicable statute (the "participation" clause)."

Intentional infliction of emotion distress and duress

Respondent has caused petitioner irreparable harm, emotional distress and duress, stress, humiliation, embarrassment, irreparable damage to tai chi and self defense instructor career, which will continue in the future.

Title I Civil Rights Act of 1991-U.S.C. 1981 (A) (B) violations

"PROHIBITION AGAINST ALL RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS

SEC. 101

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended-

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship."

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law."

DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION

SEC. 102

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C. 1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT. [42 U.S.C. 1981a]"

Title VII Civil Rights Act of 1964, as amended

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703]

"(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with

respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin."

SEC. 2000e-3: [Section 704]

"(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labormanagement committee controlling apprenticeship or other training or retraining, including on the job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under this subchapter."

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labormanagement committee controlling apprenticeship or other training or retraining, including on the job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labormanagement committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment."

Retaliatory Actions from former employers in past three years

Petitioner has been terminated from almost ten employers and have filed almost fifthteen complaints in Federal District Court regarding employment discrimination in the past three years since employment termination from North Seattle CC in 2004 and Shoreline

CC in 2005 due to associated direct retaliatory and discriminatory actions conduct from various employers in Washington State.

Retaliatory Actions from second state college Shoreline CC in 2005.

Petitioner was terminated and replaced by another tai chi instructor from another state college named Shoreline CC in or about 2005, however, in that case the person is a Caucasian female, not male as in this case. In that case, petitioner was terminated tai chi instructor after I attempted to file discrimination complaint with the EEOC against respondent, and after petitioner filed internal workplace discrimination complaint in "good faith" against Shoreline CC.

Appropriate of Writ of Certiorari

Petitioner believes this court should grant writ of certiorari because this is of national importance in that this state college is violating the fifth and fourteenth amendments of US Constitution and claiming that instructors who are instructing for the continuing education department are independent contractors, when in fact the instructors are not, therefore, wrongfully terminating instructors and discriminating against petitioner.

Obligation of respondent to follow, adhere, and abide to United States Federal IRS tax laws rules and

regulations regarding employee versus independent contractor status

Petitioner believes respondent has violated and will continue to violate tax laws in hidden attempt to avoid employment taxes and liability for continuing education instructors. Furthermore, respondent issued W2 tax forms instead of petitioner due to US Federal IRS tax laws indicate petitioner is in fact employed and not independent contractor.

Written complaints to Public Employment Relations Commissions in year 2007

Petitioner filed written complaints with the Public Employment Relations Commissions in or about January 2007 regarding respondent's violations of labor union, i.e. Seattle Community College Federation of Teachers Local 1789, and Shoreline Community College Federation of Teachers Local Union 1950, failure to represent petitioner and/or allow petitioner to file grievance due to the employment termination in 2004 and 2005.

DISTRICT COURT PROCEEDINGS

Abuse of Judicial Discretion:

Judge Thomas Zilly abused judicial discretion and erred in judgment when he stated in summary judgment that petitioner was independent contractor, when in fact

petitioner was not, and respondent, after three years of litigation from district court to appeal court, still fails to provide admissible evidence to offset this allegation. In addition, judge abused discretion when exhibits filed in district court were not even reviewed and/or considered by judge Zilly in the judgment. Furthermore, Motion for summary judgment under FRCP 56 c "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." and Petitioner Riccardo Green was not even allowed fair judicial hearing from the exhibits, facts, pleadings, and documents filed related to the brief opposition to defendant's motion for summary judgment.

COURT OF APPEALS PROCEEDINGS

Abuse of Judicial Discretion

The ninth circuit court of appeals panel of judges all abused discretion and erred in judgment when in fact supplemental records on appeals were not even reviewed and/or considered in the memorandum. Petitioner paid almost three hundred dollars for photocopies to send to appeals court. Petitioner does not believe respondent obtains any merits from one single deposition testimony of petitioner, who indicated

in deposition respondent tried to get rid of petitioner's employment and failed to provide petitioner any class roster for the same quarter petitioner was replaced as tai chi instructor by a male Caucasian instructor named Dennis Sharp in 2004.

Willful Misrepresentation from lead defense counsel Aaron Rocke, Washington State Attorney General's Office, and respondent, North Seattle Community College.

Respondent, defense counsel Aarron Rocke, and Washington State Attorney General's Torts Appellate department all has stated that petitioner is independent contractor, when in fact petitioner is not and was never independent contractor, and no independent contractor exists, in fact employed by respondent with rights to fringe benefits, union representation, grievance procedures and policies, fair and equal employment rights as any other white Caucasian citizen in the united states and/or employee of respondent.

Filing of complaint of employment discrimination by a pro se litigant

Ninth circuit has upheld that pleading filed by pro se litigants must be construed and not raised higher standards for pro se litigants who are non licensed law practitioners compared to licensed attorney at law. Petitioner made drastic errors in litigation in federal court, but not intentional.

Filing complaint with U.S. Federal IRS against North Seattle CC and Shoreline CC

Arguments

Respondent is deficient in providing any evidence, for the past three years, that petitioner is an independent contractor. Respondent is deficient in providing any evidence that petitioner received any class rosters for tai chi class in Spring 2004 from Marva Scholesslor. Respondent is deficient in providing any evidence that petitioner quit employment as tai chi instructor and/or self defense instructor. Petitioner reasserts that appellees' explanation does not have explanatory worthy credence. Respondent is deficient in providing any signed agreed forms of any instructor payment policies, instructor cancellation policies, arbitration forms, waiver liability forms, collective bargaining agreements, and pay compensation agreement forms. Order from district court erred in missed vital admissible facts, and abused discretion in judgment. Petitioner was never an independent contractor, but employed by North Seattle CC, period.

REASONS FOR GRANTING THE WRIT

Petitioner believes the writ should be granted for multiple reasons. First of all this case is of national importance. Petitioner has been discriminated against on multiple levels proven in race and national origin discrimination, wrongfully terminated, and violations of fifth and fourteenth amendments to US Constitutions. Petitioner will continue to be discriminated against from

other employers in associated retaliation for opposing discrimination in "good faith" against respondent. Respondent has engaged into and will continue to engage into discriminatory conduct of wrongful terminations, race and national origin discrimination, and violate petitioners and other instructor's constitutional rights of the fifth and fourteenth amendments to US Constitution by further employment discrimination and terminations without establishing any independent contracts with petitioner and/or any other instructors.

CONCLUSION

For the foregoing reasons stated above, the petition for a writ of certiorari should be **GRANTED**. The petitioner, therefore, extremely urges and requests respectfully this Honorable Court to **GRANT** in full this petition for writ of certiorari to **CORRECT** and **REVERSE** the error of the federal courts and appellate courts, and **REMAND** case to trial court in US Federal Court of Western District of Washington, Seattle branch.

Respectfully submitted on this day of March 06, 2008

Riccardo Green
Po Box 45181
Seattle, WA. 98145
Riccardogreencases@yahoo.com
Pro se Litigant Attorney
Counsel for Petitioner

No. _____

IN THE
Supreme Court of the United States

RICCARDO GREEN,

Petitioner,

v.

NORTH SEATTLE COMMUNITY COLLEGE,

Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

APPENDIX A

RICCARDO GREEN
(Pro Se Counsel of
Record)
Po Box 45181
Seattle, WA. 98145

Counsel for Petitioner

United States Court of Appeals,Ninth Circuit.

Riccardo GREEN, Plaintiff-Appellant,

v.

NORTH SEATTLE COMMUNITY COLLEGE, Defendant-Appellee.

No. 06-35377.

Submitted June 5, 2007 FN*.

Filed June 11, 2007.

Appeal from the United States District Court for the Western District of Washington Thomas S. Zilly, District Judge, Presiding. D .C. No. CV-05-00129-TSZ.

Before LEAVY, RYMER, and T.G. NELSON, Circuit Judges.

MEMORANDUM

***1** Riccardo Green appeals pro se from the district court's summary judgment for North Seattle Community College (the "College") in Green's action alleging Title VII violations on the basis of race, and breach of contract. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Cornwell v. Electra Cent. Credit Union,* 439 F.3d 1018, 1027 n. 4 (9th Cir.2006). We affirm in part, and vacate and remand in part.

[1] The district court properly granted summary judgment on Green's claim that the College paid him less than white instructors of tai chi because Green did not offer evidence that he was paid less. *See id.* at 1028-29 & n. 6 (explaining the burden-shifting scheme of *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and noting that a plaintiff cannot create a genuine issue of material fact by "relying solely on the plaintiff's subjective belief").

The district court properly granted summary judgment on Green's claim that he was given extra duties due to his race, because the College's request that Green let

his students into the locked building where he taught an early morning class was not an adverse employment action. *See generally* Ray v. Henderson, 217 F.3d 1234, 1240-43 (9th Cir.2000) (discussing the range of adverse employment actions).

The district court properly granted summary judgment on Green's claim that the College did not hire him as an instructor for a tai chi class due to his race, because Green failed to controvert the College's evidence that it believed that Green was unavailable to teach the class. *See* Aragon v. Republic Silver State Disposal, Inc., 292 F.3d 654, 664 (9th Cir.2002) (concluding that a plaintiff had not "presented the substantial and specific evidence required to demonstrate that [his employer's] reasons for [his] lay off were a pretext for racial discrimination").

The district court properly granted summary judgment on Green's claim of retaliation because Green did not offer any evidence that his informal complaint to the College alleged racial discrimination. *See* Learned v. City of Bellevue, 860 F.2d 928, 932 (9th Cir.1988) ("[T]he opposed conduct must fairly fall within the protection of Title VII to sustain a claim of unlawful retaliation.").

[2] Given its determination that the Eleventh Amendment bars Green's breach of contract claim against the College, the district court should have dismissed that claim without prejudice. *See* Freeman v. Oakland Unified Sch. Dist., 179 F.3d 846, 847 (9th Cir.1999) ("The Eleventh Amendment is a limit on federal courts' jurisdiction. Dismissals for lack of jurisdiction should be ... without prejudice so that a plaintiff may reassert his claims in a competent court.") (internal quotation marks and citations omitted). Thus, we order the district court to modify its judgment to

specify that Green's breach of contract claim is "dismissed without prejudice."

We deny all pending motions.

The parties shall bear their own costs on appeal.

***2 AFFIRMED in part, VACATED and REMANDED in part.**

FN* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

FN** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

C.A.9 (Wash.), 2007.

Green v. North Seattle Community College

Slip Copy, 2007 WL 1676063 (C.A.9 (Wash.))

No. _____

IN THE
Supreme Court of the United States

RICCARDO GREEN,

Petitioner,

v.

NORTH SEATTLE COMMUNITY COLLEGE,

Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

APPENDIX B

RICCARDO GREEN
(Pro Se Counsel of
Record)
Po Box 45181
Seattle, WA. 98145

Order

No. 06-35377
DC# CV-05-00129-TSZ
Western Washington
(Seattle)
July 31, 2007

Before: LEAVY, RYMER, AND T.G. Nelson, Circuit Judges.

The petition for panel rehearing is denied.

No further filings will be accepted in this closed case.

Counsel for Petitioner

No. _____

IN THE
Supreme Court of the United States

RICCARDO GREEN,

Petitioner,

v.

NORTH SEATTLE COMMUNITY COLLEGE,

Respondent

On Petition for a Writ of Certiorari
to the United States District Court of Western District of Washington

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APPENDIX C

RICCARDO GREEN
(Pro Se Counsel of Record)
Po Box 45181
Seattle, WA. 98145

Counsel for Petitioner

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICCARDO C. GREEN,
Plaintiff,
v.
NORTH SEATTLE COMMUNITY COLLEGE,
Defendant.

No. C05-129Z
May 03, 2006

ORDER

This matter comes before the Court on Defendant North Seattle Community College's ("Defendant" or "NSCC") motion for summary judgment as to each of Plaintiff Riccardo Green's ("Plaintiff") claims. Docket no. 34. Plaintiff has filed a brief in opposition to the motion and two separate motions to strike the Defendant's declarations. Docket nos. 77, 80, 81. Plaintiff has also filed a belated motion to file an over-length brief and a motion to amend defective declarations. Docket nos. 65, 79.1 In its reply, Defendant also moves to strike Plaintiff's declaration. Docket no. 75. Having reviewed the briefing and supporting declarations, the Court now enters the following Order.

Foot note 1: Defendant has not filed an opposition to Plaintiff's request for an over-length brief. Plaintiff's motion is GRANTED.

BACKGROUND

Acting pro se, Plaintiff brings the following claims against Defendant: (1) retaliation in the form of being replaced as an instructor; (2) racial discrimination in pay; (3) disparate treatment; (4) retaliation for complaining about racial treatment; and (5) breach of contract. Amend. Compl., docket no. 11, at ¶¶ 3.9-6.7. Plaintiff began working as a Continuing Education ("CE") instructor at NSCC in summer quarter 2001. Amend. Compl. ¶ 3.1; Bittenbender Decl., docket no. 35, at Ex. 6. NSCC hires CE instructors on a part-time basis for not longer than one academic quarter at a time. Bittenbender Decl., at ¶ 5. CE instructors are not members of the faculty union and are not covered by most of the state higher education rules or college district policies. Id. Plaintiff's claims arise out of a series of events that occurred between the winter and fall academic quarters of 2004. Amend. Compl. ¶¶ 3.1-3.9. Plaintiff alleges that he was discriminated against based upon his race by: (1) being asked to take on work-related duties that a fellow instructor, who is Caucasian, was not asked to perform; (2) receiving lower pay than Caucasian instructors; and (3) being replaced by a Caucasian instructor for the summer quarter 2004 tai chi class. Plaintiff also claims that he was retaliated against for complaining about this alleged discrimination. Amend. Compl. ¶ 3.7. Finally, Plaintiff appears to claim that Defendant breached an employment contract to which he was a party. Id. ¶ 6.5-6.7.

Increased Work Duties

In winter quarter 2004, which ran from January 5 through March 24, Plaintiff taught a tai chi class at the NSCC Wellness Center. Bittenbender Decl., at Ex. 4

(2003-2004 academic calendar). Plaintiff's class, along with another fitness class taught by a Caucasian instructor, was scheduled for Saturday mornings at 9:00 a.m. Because the building did not regularly open until 10:00 a.m. on Saturdays, Plaintiff was asked to press a button near the entrance to the Wellness Center, which alerted campus security that he, his students, the other instructor, and her students wished to enter the building for the 9:00 a.m. classes.

ORDER -2-

Rocke Decl., docket no. 36, Ex. 3 (Green Dep. at 67-69). Plaintiff was also asked to stand by the door once it was open and let students in as they arrived, but he did not do so because he felt the task was the NSCC's responsibility. Id. (Green Dep. at 127). Plaintiff was asked to take on these tasks—calling security and opening the door for arriving students—in a phone message from Kendall Harris ("Harris"), a NSCC administrator. Id. (Green Dep. at 67-68). Plaintiff responded by leaving a message with Harris that he did not want to be responsible for making sure the door was open for students because it was not part of his teaching duties. Id. Plaintiff did not suggest to anyone at NSCC that the responsibilities he was assigned involving letting students into the Wellness Center were the result of race discrimination until he filed a claim with the EEOC and the Washington State Human Rights Commission on August 10, 2004. Rocke Decl., Ex. 1.

CE Instructor Pay

Plaintiff claims that he was discriminated against based on his race because he was paid less than

Caucasian instructors. In his deposition, Plaintiff stated that he believed he was paid $20 per hour when he started working at NSCC and received raises to $30 per hour. Rocke Decl., Ex. 3 (Green Dep. at 143). Defendant's pay records indicate that Plaintiff was paid $25 per hour as of summer 2001 and $30 per hour thereafter. Bittenbender Decl., Ex. 6. At his deposition, Plaintiff stated that he does not know what other instructors at NSCC were paid. Rocke Decl., Ex. 3 (Green Dep. at 143). Defendant states that CE instructors are generally paid on an hourly basis unless they teach a class that lasts no more than three sessions or meets at an outside facility, in which case they may be paid on a percentage basis. Bittenbender Decl., ¶ 5. Defendant also submits a pay table indicating that, at $30 per hour, Green was paid as much as or more than every other martial arts instructor. Id., at Ex.6.

Summer 2004 Tai Chi Class

For spring quarter 2004, Plaintiff was scheduled to teach a tai chi class beginning on April 17, 2004. Id., Ex. 4. On Friday, April 16, 2004, Plaintiff called NSCC to inform them that he would "not be available for Saturday morning tai chi class." Rocke Decl., Ex. 3 (Green Dep. at 110); Bittenbender Decl., at ¶ 13. When asked at his deposition why he cancelled his tai chi class for spring 2004, Plaintiff responded as follows:

> Well, I did not know if the class was going to be held or not due to the low enrollment or any enrollment because I wasn't notified ahead of

> time. And I was working at the time. And this other job that I had had the ability to offer me hours to work for that quarter. And so I went ahead and cancelled the class.

Rocke Decl., Ex. 3 (Green Dep. at 115). Plaintiff stated that the other work that was available at the same time as the tai chi class paid more than his wages for teaching at NSCC. Id. (Green Dep. at 118). Defendant was able to find a replacement for Plaintiff, Dennis Sharp ("Sharp"), who taught the spring quarter 2004 tai chi class in Plaintiff's place. Id. In his brief, Plaintiff states that he "admits Plaintiff had thoughts of cancelling due to other opportunities and life style changes, but was not sure." Pl.'s Opp. Br., docket no. 77, at 9. For summer quarter 2004, Plaintiff was originally listed as the instructor for the sole tai chi class offered that quarter. Green Decl., docket no. 60, at 618. However, some time after Plaintiff cancelled his spring 2004 tai chi class, NSCC replaced Plaintiff as the instructor for the summer class with Sharp, who is Caucasian. Id., at 645; Bittenbender Decl., Ex. 6. When Plaintiff became aware that he had been replaced, the following email exchange occurred between Plaintiff and Harris of NSCC:

> **Plaintiff:** WHY WAS I REPLACED BY D. SHARP FOR THE TAI CHI
> CLASSES TAUGHT ON THE WEEKENDS[?] I HAVE BEEN TEACHING
> THIS CLASS FOR THE PAST THREE TO FOUR YEARS! I CANCELLED
> DUE TO ABRUPT SCHEDULE IN MY LIVE [sic] THAT CHANGED THIS

QUARTER SPRING 2004. I WAS AUTHORIZED TO TEACH THIS
SUMMER QUARTER 2004 – TAI CHI CLASS. HOW MUCH
NOTIFICATION SHOULD I HAVE GIVEN PRIOR TOO [sic] SPRING 2004
TAI CHI CLASS[?] I DID NOT AUTHORIZE CANCELLATION FOR TAI
CHI CLASS FOR SUMMER 2004!!! I APPRECIATE AN ANSWER!!!

ORDER -4-

Harris: Mr. Green, We received your call late in the afternoon of April 16th informing us that your work schedule had changed and you would not be able to teach on Saturday mornings. Your class, Beginning Tai Chi, scheduled for April 17th was postponed for one week. Our staff called all 19 registered students to inform them of the change. We immediately began a search for a replacement instructor available to teach the Saturday morning class at the last minute. D. Sharp (a Tai Chi instructor with Continuing Education for the past three years) graciously agreed to teach the class and we were able to hold our first session the following week. Since we did not hear back from you telling us you were now available for Saturday mornings, we developed our summer schedule using Mr. Sharp's proposed modification of the Tai Chi class. We were very grateful for his help in retaining the 19 students and providing an enjoyable class. We made the changes to the course description and scheduled the class Beginning Tai Chi (Grasping and Sparrow's Tail) on Saturdays from 9:00-10:30 a.m. The Continuing Education staff evaluates the variety of classes each

quarter to determine the classes, times, locations and instructors to best present a program that will serve the needs of our students. We are constantly changing our offerings to reflect student demand and successful instructors.
Plaintiff: Kendall, did I cancel for summer quarter 2004 to instruct tai chi
class?
Harris: Riccardo, You informed us on April 16th that your schedule had changed and you were unable to work on Saturday mornings. We were completing the final changes for the summer print schedule the week of April 18-23. Since you did not contact Melissa Heneghan to let her know you were able to teach on Saturdays, you were not assigned a Saturday morning class.

Green Decl., at 1071. In his opposition brief, Plaintiff states that he "objects to Defendant's assertion that the only instructor to instruct for summer 2004 was the instructor who substituted for Plaintiff in Spring Quarter 2004 is absolutely false." Pl.'s Opp. Br., at 16. Plaintiff does not state how or why Defendant's assertion that Sharp was the only summer 2004 tai chi instructor is false.2

End of Employment in Fall Quarter 2004.

In his deposition, Plaintiff repeatedly stated that he resigned from teaching at NSCC before fall quarter 2004. Rocke Decl., Ex. 3 (Green Dep. at 92 ("I quit teaching, instructing my self-defense class due to the fact of how everything was going."); 96 ("I cancelled for the

Foot note 2: The Court also notes that even if Defendant's statement that there was only one tai chi instructor for summer quarter 2004 was "false," as Plaintiff suggests, it would have no effect on this Court's ruling because it does not aid in establishing discriminatory intent.

fall of 2004 because of the—after I was told that there's no students for the summer quarter of self-defense class all of a sudden, which was unusual."); 99 ("Then they offered [selfdefense] for the fall and, that's when I already said no, I'm putting my two weeks notice in. I cancelled it. I don't want to teach self-defense starting the fall of 2004, yeah."); 139 ("I did indicate to Mr. Kendall Harris that I resigned from the college.")). However, in his brief, Plaintiff states that he was forced to resign. Pl.'s Opp., at 11. In his declaration, Plaintiff submits a July 29, 2004, email, which provides the following exchange:

Plaintiff: To confirm, my employment with North Seattle cc is terminated?
Harris: We do not have any scheduled classes for you in the Fall 2004 quarter.
Plaintiff: Why am I not being able to offer self defense for fall 2004?
Harris: We have decided not to offer the class for Fall quarter.

Green Decl., at 1075. Despite his deposition statements about resigning, Plaintiff states that after his deposition he "recollected via memory, instead Plaintiff was forced to resign." Pl.'s Opp. Br., at 14 (citing Green Decl., at 1075). Defendant also suggests that Plaintiff resigned because he was without transportation. In his

deposition, Plaintiff stated that he resigned from similar teaching positions at Shoreline Community College and Bellevue Community College in fall 2004 because his car was totaled on September 14, 2004. Rocke Decl., Ex. 3 (Green Dep. at 30, 44, 47). In response, Plaintiff states that he "never resigned from the employment in Fall 2004 because of the hit and run car accident in front of my place of residence . . . ." Pl.'s Opp. Br., at 10.

Plaintiff's Race Discrimination Allegations

Plaintiff described his racial classification in his deposition as "a quarter African-American, Jamaican, Filipino, some Hispanic/Spanish background and also Mongolian." Rocke Decl., Ex. 3 (Green Dep. at 8). Plaintiff stated he does not know which racial category is the basis for his allegation that he was discriminated against and further stated "Ihaven't heard or been told any racial derogatory words as of yet or any hate crimes or any threats that are race related." Id. (Green Dep. at 148-49). When asked why he believes he

was singled out based on his race, Plaintiff responded: "Well, the first one is that I was definitely requested these extra duties that the other instructor who's a female who's Caucasian was not. I was also asked on top of that including myself and the security guard who is African-American of those duties. The next one is also my wage." Id. (Green Dep. at 150). Plaintiff concedes that he did not make any complaint to Defendants regarding racial discrimination until he filed a claim with the EEOC on August 10, 2004, which was forwarded to

the Washington State Human Rights Commission. Pl.'s Opp., at 11; Green Decl., at 105. Plaintiff was asked whether, when he complained about his "extra duties," he alleged discrimination by NSCC. Rocke Decl., Ex. 3 (Green Dep. at 177). Plaintiff responded only by stating: "I know it was close to Martin Luther King Day. And I indicated to them that I did not appreciate it and I wish it would stop. And they replaced me with a Caucasian instructor. I mean the paper evidence stands." Id.

Motions to Strike

Plaintiff has filed what are ostensibly motions to strike both the Bittenbender declaration and the Rocke declaration. Docket nos. 80, 81. However, Plaintiff's "objections" to these declarations are without merit. For example, Plaintiff repeatedly states that the exhibits contained in the declarations are "subject to great scrutinization [sic] and speculation in that information could have been altered. Therefore, no date, signature, and so forth indicated. Exhibit information could have been altered, revised, rescinded, deleted, omitted, and changed in any way to create a legal defense in this case." Mot. to Strike, docket no. 80, 5, 8, 11, 14, 17. Plaintiff also repeatedly objects that he has not "agreed to, signed to, acknowledge [sic] to this form in its entirety." Id. 3, 6, 9, 12, 15. Finally, Plaintiff argues that the excerpts from his deposition are "inflammed [sic] and not authentic documentary admissible evidence," that "Defendant attempts to defraud" the Court, and that "Defendant['s] materials and exhibits are nullified, terminated, and squashed." Docket no.

81, ¶¶ 3, 6, 7. A review of the declarations in question reveals that they are made with personal knowledge and signed under oath. Plaintiff's motions are DENIED. In its reply, Defendant moves to strike Plaintiff's declaration because it is "unsworn, unsigned, and un-notarized." Docket no. 75. Plaintiff did sign the certificate of service page of his brief and declaration, and he subsequently filed a signed copy of his brief. Plaintiff has also filed a "motion to amend" the declaration supporting his opposition to Defendant's summary judgment motion, which is found at docket no. 60. Docket no. 79. Given that Plaintiff is a pro se litigant, the Court DENIES Defendant's motion to strike. Plaintiff's motion to amend his declaration is GRANTED and the Court considers Plaintiff's declarations properly signed for purposes of this motion.

DISCUSSION

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met this burden, the opposing party must show that there is a genuine issue of fact for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The opposing party must present significant and probative evidence to support its claim or defense. Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991). For purposes of this motion, reasonable doubts as

to the existence of material facts are resolved against the moving parties and inferences are drawn in the light most favorable to the opposing party. Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000).

I. Discrimination Claims

Plaintiff brings claims under Title VII of the Civil Rights Act of 1964, which provides that "it shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of

employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). In Vasquez v. County of Los Angeles, the Ninth Circuit succinctly described the burden shifting process of a Title VII claim as follows:

> In order to prevail in a Title VII case, the plaintiff must establish a prima facie case of discrimination. If the plaintiff succeeds in doing so, then the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for its allegedly discriminatory conduct. If the defendant provides such a reason, the burden shifts back to the plaintiff to show that the employer's reason is a pretext for discrimination. For a prima facie case, [the plaintiff] must offer evidence that gives rise to an inference of unlawful discrimination, either through the framework set forth in McDonnell Douglas Corp. v. Green or with direct or circumstantial evidence of discriminatory intent.

> Under McDonnell Douglas, unlawful discrimination is presumed if the plaintiff can show that (1) [he] belongs to a protected class, (2) [he] was performing according to [his] employer's legitimate expectations, (3) [he] suffered an adverse employment action, and (4) other employees with qualifications similar to [his] own were treated more favorably. 411 U.S. 792, 802 (1973).

349 F.3d 634, 640 n.5 (9th Cir. 2003).

A. Prima Facie Case

Plaintiff appears to allege that Defendant engaged in discriminatory conduct toward him in three ways: (1) asking him to let students into the Wellness Center for Saturday classes in January 2004 while not asking the Caucasian professor to perform the same task; (2) paying him less than other professors and/or not offering him the option of being paid on a percentage basis rather than hourly; and (3) cancelling his summer quarter 2004 tai chi class and replacing him with Sharp.3 Plaintiff does not provide any direct or circumstantial evidence that anyone working at NSCC acted with discriminatory intent. Plaintiff stated: "I haven't heard or been told any racial derogatory words as of yet or any hate crimes or any threats that are race related." Id. (Green Dep. at 148-49). Plaintiff appears to rely only on

Foot note 3: Although it is neither clear from the Complaint nor the opposition brief, Plaintiff may also be arguing that he was discriminated against by being removed or constructively discharged from teaching at NSCC, as well as alleging that such action forms the basis for his retaliation claim. In any event, the

Court concludes that the Plaintiff has not raised material issues of fact as to whether Defendant's legitimate, non-discriminatory reason for such action was a pretext for racial discrimination.

ORDER -9-

the fact that he is of mixed-race descent and he allegedly suffered adverse employment action while working at NSCC. Thus, to survive summary judgment, Plaintiff must first establish that there are genuine issues of material fact as to the McDonnell Douglas four-part test.

> The four McDonnell Douglas elements are: (1) Plaintiff belongs to a protected class; (2) Plaintiff was performing according to his employer's legitimate expectations; (3) Plaintiff suffered an adverse employment action; and (4) other employees with qualifications similar to Plaintiff's own were treated more favorably. 411 U.S. at 802. First, there is no dispute that Plaintiff is a member of a protected class based on his racial heritage. There is also no argument by Defendant that Plaintiff was not performing according to their expectations when he was teaching. Thus, the disputed McDonnell Douglas elements are whether Plaintiff suffered adverse employment action and whether other employees were treated more favorably.

1. Extra Employment Duties

Defendant argues that being asked to open the door early to let students into the Wellness Center cannot constitute "adverse employment action" because it was an insignificant task, was merely a

request that was abandoned when Plaintiff stated he did not wish to be responsible for the task, and was not actually performed as requested. Defendant is correct. The task only involved pressing a button to alert campus security that Plaintiff, his students, and others wished to be let into the building and making sure that arriving students were able to enter. Moreover, Plaintiff did not actually engage in much of what he complains was his assigned "extra duty." Rocke Decl., Ex. 3 (Green Dep. at 127). Simply being asked to perform a minor task, without actually having to carry out that task, is not an adverse action. Because Plaintiff cannot raise an issue of fact as to whether the "extra duty" he was assigned constitutes an adverse employment action, this portion of his claim must fail.

2. Plaintiff's Pay

Defendant states that, at $25-$30 per hour for 2001-2004, Plaintiff was paid equal to or more than other instructors teaching similar classes. Defendant provides both a historical summary of pay records for instructors teaching "exercise" classes, as Plaintiff did, and includes the NSCC Instructor Pay policy. Bittenbender Decl., Exs. 2, 6. The Instructor Pay policy states that "[a]ll instructors will be offered an hourly pay rate for all contract hours of assigned classes." Id. For CE classes, the policy allows NSCC to "*elect* to pay the instructor based on a percentage of the final student tuition" under limited conditions, such as classes meeting for three or fewer sessions or classes in which the instructor provides the facilities.

Id. (emphasis added). Defendant states that these exceptions did not apply to Plaintiff's classes, which Plaintiff does not appear to dispute.

Plaintiff makes a largely incoherent argument that Defendant has not established that other instructors, specifically Dennis Sharp, were not paid more than him. Pl.'s Opp. Br., at 12 ("the burden of proof is switched to the Defendant to prove that Mr. Dennis Sharp was not paid $30 beginning in 2001-2004 versus Plaintiff who was paid at $25 an hour"). Plaintiff also states that "yoga gets paid more or less than tai chi even though both disciplines are exercises – Plaintiff is very confused." Id. Plaintiff also seems to complain that he was not given the option to be paid on a percentage basis. Id., at 13 ("Plaintiff objects to Defendant's assertion that some instructors were paid on a percentage basis due to the fact that the instructor taught in a different location.").

Plaintiff misunderstands that it is his burden to first provide "significant and probative evidence" raising an issue of fact as to whether he suffered an adverse employment action in the form of lower pay. See Intel Corp., 952 F.2d at 1558. Plaintiff has not done so. Indeed, the wage history provided by Defendant indicates that Plaintiff was paid $25 per hour in fall quarter 2001 and $30 per hour thereafter. Bittenbender Decl., Ex. 6. In contrast, the other tai chi instructors, Sharp and Blogg (who are Caucasian) were paid only $25 per hour.

through 2004, with the exception of Sharp's pay of $30 per hour for the single class he took over when Plaintiff cancelled. Id. Simply put, all the evidence before the Court indicates that Plaintiff was paid more, not less, than similarly situated employees. Accordingly, the Plaintiff's "disparate pay" discrimination claim must fail as well.

3. Replacing Plaintiff as an Instructor

Plaintiff argues that he suffered an adverse employment action because he was replaced for the summer quarter 2004 tai chi class by Sharp after Plaintiff cancelled his spring quarter 2004 tai chi class. The fact that Plaintiff was replaced is undisputed. Defendant argues that it has demonstrated that Plaintiff was not treated differently because of his race because it offered only one tai chi class and neither Plaintiff nor another Caucasian instructor was given the position. However, the instructor who was given the position was Caucasian. Thus, Defendant's argument speaks to whether it had a legitimate, nondiscriminatory reason for replacing Plaintiff, not whether Plaintiff can make out a prima facie case under McDonnell Douglas. It is undisputed that Plaintiff suffered an adverse employment action (being replaced for the quarter) and that a similarly situated employee was treated differently (Sharp was his replacement). Thus, this portion of Plaintiff's claim must proceed to the next step in the Title VII discrimination analysis.

B. Legitimate, Nondiscriminatory Reason for Defendant's Conduct

Based on the above analysis, the next question is whether Defendant has provided a legitimate, nondiscriminatory reason for replacing Plaintiff with Sharp for the summer quarter 2004 tai chi class. See Vasquez, 349 F.3d at 640. As indicated in the email exchange between Plaintiff and Harris, NSCC stated that Plaintiff was replaced because: (1) Plaintiff cancelled his spring quarter 2004 class at the last minute leaving NSCC in the precarious position of having to notify 19 students that the class had been cancelled, as well as having to find a replacement on short notice; and (2) the summer scheduling was completed during the week of April 18-23, 2004, which was the week after Plaintiff.

informed NSCC that he was unavailable for Saturday morning classes, meaning NSCC had no reason to believe that Plaintiff was available for the Saturday morning classes in summer quarter 2004. Green Decl., at 1071. The email by Harris also indicated that NSCC was constantly changing its schedule to reflect "successful instructors," suggesting that Defendant wished to reward Sharp for filling in at the last minute when Plaintiff cancelled. Id. Finally, Plaintiff was not the only regular tai chi instructor who was not allotted a class for summer quarter 2004. NSCC also did not offer a class to Blogg, who is Caucasian. Bittenbender Decl., Ex. 6. Based on these undisputed statements and actions, Defendant has established legitimate, nondiscriminatory reasons for replacing Plaintiff as the sole tai chi instructor for summer quarter 2004.

C. Plaintiff's Burden to Establish Pretext

Given that Defendant has established legitimate, nondiscriminatory reasons for replacing Plaintiff as the tai chi instructor for summer quarter 2004, the burden shifts back to Plaintiff to raise an issue of fact as to whether Defendant's reasons are a pretext for discrimination. See Vasquez, 349 F.3d at 640. Plaintiff completely fails in this regard. In his opposition brief, Plaintiff offers only an unfocused list of complaints regarding being replaced. He states that he has "been placed into a conspiracy regarding cancelling on late notice as a reverse defense created by the Defendant" and that Defendant's actions were a "pretense to get rid of Plaintiff from employment due to the fact that Plaintiff was referred to another tai chi instructor position in Bellevue Pro Sports Club by management." Pl.'s Opp. Br., at 9. Nowhere does Plaintiff explain what evidence establishes that NSCC administrators were motivated by race-based considerations. The mere fact that Plaintiff is not Caucasian and the administration officials at NSCC are Caucasian is simply insufficient to rebut Defendant's well-founded reasons for allotting the summer quarter position to Sharp rather than Plaintiff. Plaintiff's Title VII discrimination claims fail as a matter of law, and Defendant's motion for summary judgment is GRANTED.

II. Retaliation Claim

Plaintiff claims that NSCC administrators retaliated against him by cancelling his fall quarter 2004 self-defense course and, thereby, constructively discharged him as an instructor at NSCC. Title VII

prohibits retaliation against an employee because the employee "has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). "To make out a prima facie case of retaliation, an employee must show that: (1) he engaged in a protected activity; (2) his employer subjected him to an adverse employment action; and (3) a causal link exists between the protected activity and the adverse action." Ray v. Henderson, 217 F.3d 1234, 1240 (9th Cir. 2000). In Ray, the Ninth Circuit noted that both formal complaints filed with the EEOC and informal complaints made to an employee's supervisor constitute "protected activities" under the prima facie case analysis. Id. at 1240 n.3. However, the protected activity must involve expressing some form of "concern about discrimination." Jurado v. Eleven-Fifty Corp., 813 F.2d 1406, 1412 (9th Cir. 1987). As with a discrimination claim, if the plaintiff adequately asserts a prima facie case for retaliation, "the burden shifts to the defendant to articulate a legitimate nondiscriminatory reason for its decision." Id. At 1240. Finally, "the plaintiff bears the ultimate burden of demonstrating that the reason was merely a pretext for a discriminatory motive." Id.

In this case, Defendant argues that Plaintiff has failed to raise an issue of fact as to his prima facie case of retaliation because he cannot demonstrate that he engaged in a protected activity until he filed the EEOC/Washington State Human Rights Commission complaint on August 10, 2004. Defendant is correct. Plaintiff has acknowledged that he did not make any complaint to Defendants regarding racial

discrimination until he filed his claim on August 10, 2004. Pl.'s Opp., at 11 ("Plaintiff states in deposition that Plaintiff may have not stated race to the Defendant"); Rocke Decl., Ex. 3 (Green Dep. at 177 (declining to say that he

alleged discrimination when he complained about his work situation to NSCC administrators)); Green Decl., at 105 (copy of EEOC complaint). Accordingly, any retaliation claim must necessarily be based on events that occurred *after* August 10, 2004. Plaintiff has provided no evidence that he suffered any adverse employment action after August 10, 2004. To the contrary, Plaintiff repeatedly stated in both his deposition and briefing that he resigned from further teaching at NSCC. And to the extent Plaintiff contends that he was constructively discharged, Plaintiff cites only the email exchange between he and Harris dated July 29-30, 2004. Green Decl., at 1075 (with regard to Plaintiff's self-defense class, Harris stated that "[w]e have decided not to offer the class for the Fall quarter" but did not state that NSCC no longer wished to employ Plaintiff as a CE instructor).4 Plaintiff cannot base a retaliation claim on actions that were allegedly undertaken by NSCC *before* he made any complaint regarding racial discrimination. Defendant's motion for summary judgment as to Plaintiff's retaliation claims is GRANTED.

III. Breach of Contract Claims

Plaintiff's Amended Complaint alleges a violation of 42 U.S.C. § 1981 and common law breach of

contract. Amend. Comp. ¶¶ 6.5-6.7. Defendant argues that the 42 U.S.C. § 1981 claim and breach of contract claim both fail because Plaintiff has sued only NSCC (a non-person), rather than individuals employed by NSCC, meaning Plaintiff's claims are barred by Eleventh Amendment sovereign immunity. Plaintiff has offered no response to these arguments in his opposition and no support for his claim that the Defendant breached an existing employment contract.

Footnote 4: In Kennedy v. Allied Mutual Insurance, the Ninth Circuit held that "a party cannot create an issue of fact [on summary judgment] by an affidavit contradicting his prior deposition testimony." 952 F.2d 262, 266 (9th Cir. 1991). To the extent Plaintiff states that he now "recollects via memory" that he was actually discharged from teaching at NSCC, that testimony may not be considered because it contradicts multiple statements in his deposition that he resigned by choice. See Rocke Decl., Ex. 3 (Green Dep. at 92, 96, 99, 139); Pl.'s Opp. Br., at 9, 11 (stating that he was forced to resign).

42 U.S.C. § 1981(a) provides: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." Defendant argues that Plaintiff's § 1981 claim fails because he brought this action only against NSCC, rather than any individual employed by NSCC, and NSCC (as a state agency) may rely on Eleventh Amendment sovereign immunity. Defendant is correct. See Doe v. Lawrence, 131 F.3d 836, 839 (9th

Cir. 1997) (concluding that state university is a "state agency" for purposes of sovereign immunity analysis and holding that claim for past contractual benefits against employer would be barred by sovereign immunity); Fed'n of African Am. Contractors v. Oakland, 96 F.3d 1204, (9th Cir. 1996) (holding that § 1981 suits are permissible against municipalities without stating that the same is true of state agencies). Plaintiff's common law breach of contract claim is also barred by sovereign immunity. Additionally, because Plaintiff has offered no opposition to Defendant's sovereign immunity argument, the argument is presumed to have merit. The Court GRANTS Defendant's motion to dismiss Plaintiff's § 1981 and breach of contract claims.5

CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment, docket no. 34, is GRANTED. Plaintiff's amended motions to strike the Bittenbender declaration, docket no. 80, and to strike the Rocke declaration, docket no. 81, are DENIED. Defendant's motion to strike Plaintiff's declaration, docket no. 75, is DENIED. Plaintiff's motion to file an over

Footnote 5: Defendant raises the alternative argument that, regardless of the other issues, Plaintiff's Amended Complaint must be dismissed without prejudice for insufficient service of process under FED. R. CIV. P. 12(b)(4). Because the Court grants Defendant's motion for summary judgment, the insufficiency of service of process issue is moot.

length brief, docket no. 65, is GRANTED. Finally, Plaintiff's motion to amend his declarations, docket no. 79, is GRANTED. The Clerk is directed to enter judgment dismissing this case with prejudice.

IT IS SO ORDERED.

DATED this 3rd day of May, 2006.

/s/Thomas S. Zilly

Thomas S. Zilly
United States District Judge